

HOUSE BILL No. 1794

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-2.5-6-1; IC 6-2.5-8.

Synopsis: Monthly sales tax reports by nonprofit entities. Provides that a nonprofit entity is not required to file sales tax returns if the only reason the entity is registered as a retail merchant is because the entity makes exempt purchases. Provides that the exempt organization is required to renew its exempt organization certificate every two years. (Current law provides that an exempt organization certificate is renewed by the department of state revenue every two years if the organization has no outstanding liabilities.)

Effective: Upon passage; July 1, 2007.

Smith V

January 26, 2007, read first time and referred to Committee on Ways and Means.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1794

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-2.5-6-1, AS AMENDED BY P.L.153-2006,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2007]: Sec. 1. (a) Except as otherwise provided in this section,
4 each person liable for collecting the state gross retail or use tax shall
5 file a return for each calendar month and pay the state gross retail and
6 use taxes that the person collects during that month. A person shall file
7 the person's return for a particular month with the department and make
8 the person's tax payment for that month to the department not more
9 than thirty (30) days after the end of that month, if that person's average
10 monthly liability for collections of state gross retail and use taxes under
11 this section as determined by the department for the preceding calendar
12 year did not exceed one thousand dollars (\$1,000). If a person's average
13 monthly liability for collections of state gross retail and use taxes under
14 this section as determined by the department for the preceding calendar
15 year exceeded one thousand dollars (\$1,000), that person shall file the
16 person's return for a particular month and make the person's tax
17 payment for that month to the department not more than twenty (20)

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1 days after the end of that month.

2 (b) If a person files a combined sales and withholding tax report and
3 either this section or IC 6-3-4-8.1 requires sales or withholding tax
4 reports to be filed and remittances to be made within twenty (20) days
5 after the end of each month, then the person shall file the combined
6 report and remit the sales and withholding taxes due within twenty (20)
7 days after the end of each month.

8 (c) Instead of the twelve (12) monthly reporting periods required by
9 subsection (a), the department may permit a person to divide a year into
10 a different number of reporting periods. The return and payment for
11 each reporting period is due not more than twenty (20) days after the
12 end of the period.

13 (d) Instead of the reporting periods required under subsection (a),
14 the department may permit a retail merchant to report and pay the
15 merchant's state gross retail and use taxes for a period covering:

16 (1) a calendar year, if the retail merchant's average monthly state
17 gross retail and use tax liability in the previous calendar year does
18 not exceed ten dollars (\$10);

19 (2) a calendar half year, if the retail merchant's average monthly
20 state gross retail and use tax liability in the previous calendar year
21 does not exceed twenty-five dollars (\$25); or

22 (3) a calendar quarter, if the retail merchant's average monthly
23 state gross retail and use tax liability in the previous calendar year
24 does not exceed seventy-five dollars (\$75).

25 A retail merchant using a reporting period allowed under this
26 subsection must file the merchant's return and pay the merchant's tax
27 for a reporting period not later than the last day of the month
28 immediately following the close of that reporting period.

29 (e) If a retail merchant reports the merchant's adjusted gross income
30 tax, or the tax the merchant pays in place of the adjusted gross income
31 tax, over a fiscal year or fiscal quarter not corresponding to the
32 calendar year or calendar quarter, the merchant may, without prior
33 departmental approval, report and pay the merchant's state gross retail
34 and use taxes over the merchant's fiscal period that corresponds to the
35 calendar period the merchant is permitted to use under subsection (d).
36 However, the department may, at any time, require the retail merchant
37 to stop using the fiscal reporting period.

38 (f) If a retail merchant files a combined sales and withholding tax
39 report, the reporting period for the combined report is the shortest
40 period required under:

41 (1) this section;

42 (2) IC 6-3-4-8; or

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(3) IC 6-3-4-8.1.

(g) If the department determines that a person's:

(1) estimated monthly gross retail and use tax liability for the current year; or

(2) average monthly gross retail and use tax liability for the preceding year;

exceeds ten thousand dollars (\$10,000), the person shall pay the monthly gross retail and use taxes due by electronic funds transfer (as defined in IC 4-8.1-2-7) or by delivering in person or by overnight courier a payment by cashier's check, certified check, or money order to the department. The transfer or payment shall be made on or before the date the tax is due.

(h) If a person's gross retail and use tax payment is made by electronic funds transfer, the taxpayer is not required to file a monthly gross retail and use tax return. However, the person shall file a quarterly gross retail and use tax return before the twentieth day after the end of each calendar quarter.

(i) A person:

(1) who has voluntarily registered as a seller under the Streamlined Sales and Use Tax Agreement;

(2) who is not a Model 1, Model 2, or Model 3 seller (as defined in the Streamlined Sales and Use Tax Agreement); and

(3) whose liability for collections of state gross retail and use taxes under this section for the preceding calendar year as determined by the department does not exceed one thousand dollars (\$1,000);

is not required to file a monthly gross retail and use tax return.

(j) If an exempt organization that does not file a return under IC 6-2.5-8-4 subsequently makes either exempt or nonexempt sales, the exempt organization shall begin filing returns, beginning in the reporting period the exempt organization makes the exempt or nonexempt sales. The exempt organization shall file a return as provided under IC 6-2.5-6-1 on a form and in a manner prescribed by the department.

SECTION 2. IC 6-2.5-8-1, AS AMENDED BY P.L.111-2006, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) A retail merchant may not make a retail transaction in Indiana, unless the retail merchant has applied for a registered retail merchant's certificate.

(b) A retail merchant may obtain a registered retail merchant's certificate by filing an application with the department and paying a registration fee of twenty-five dollars (\$25) for each place of business

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1 listed on the application. The retail merchant shall also provide such
 2 security for payment of the tax as the department may require under
 3 IC 6-2.5-6-12.

4 (c) The retail merchant shall list on the application the location
 5 (including the township) of each place of business where the retail
 6 merchant makes retail transactions. However, if the retail merchant
 7 does not have a fixed place of business, the retail merchant shall list the
 8 retail merchant's residence as the retail merchant's place of business. In
 9 addition, a public utility may list only its principal Indiana office as its
 10 place of business for sales of public utility commodities or service, but
 11 the utility must also list on the application the places of business where
 12 it makes retail transactions other than sales of public utility
 13 commodities or service.

14 (d) Upon receiving a proper application, the correct fee, and the
 15 security for payment, if required, the department shall issue to the retail
 16 merchant a separate registered retail merchant's certificate for each
 17 place of business listed on the application. Each certificate shall bear
 18 a serial number and the location of the place of business for which it is
 19 issued.

20 (e) If a retail merchant intends to make retail transactions during a
 21 calendar year at a new Indiana place of business, the retail merchant
 22 must file a supplemental application and pay the fee for that place of
 23 business.

24 (f) **Except as provided in section 4 of this chapter**, a registered
 25 retail merchant's certificate is valid for two (2) years after the date the
 26 registered retail merchant's certificate is originally issued or renewed.
 27 If the retail merchant has filed all returns and remitted all taxes the
 28 retail merchant is currently obligated to file or remit, the department
 29 shall renew the registered retail merchant's certificate within thirty (30)
 30 days after the expiration date, at no cost to the retail merchant.

31 (g) The department may not renew a registered retail merchant
 32 certificate of a retail merchant who is delinquent in remitting sales or
 33 use tax. The department, at least sixty (60) days before the date on
 34 which a retail merchant's registered retail merchant's certificate expires,
 35 shall notify a retail merchant who is delinquent in remitting sales or use
 36 tax that the department will not renew the retail merchant's registered
 37 retail merchant's certificate.

38 (h) A retail merchant engaged in business in Indiana as defined in
 39 IC 6-2.5-3-1(c) who makes retail transactions that are only subject to
 40 the use tax must obtain a registered retail merchant's certificate before
 41 making those transactions. The retail merchant may obtain the
 42 certificate by following the same procedure as a retail merchant under

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subsections (b) and (c), except that the retail merchant must also include on the application:

- (1) the names and addresses of the retail merchant's principal employees, agents, or representatives who engage in Indiana in the solicitation or negotiation of the retail transactions;
- (2) the location of all of the retail merchant's places of business in Indiana, including offices and distribution houses; and
- (3) any other information that the department requests.

(i) The department may permit an out-of-state retail merchant to collect the use tax. However, before the out-of-state retail merchant may collect the tax, the out-of-state retail merchant must obtain a registered retail merchant's certificate in the manner provided by this section. Upon receiving the certificate, the out-of-state retail merchant becomes subject to the same conditions and duties as an Indiana retail merchant and must then collect the use tax due on all sales of tangible personal property that the out-of-state retail merchant knows is intended for use in Indiana.

(j) The department shall submit to the township assessor before July 15 of each year:

- (1) the name of each retail merchant that has newly obtained a registered retail merchant's certificate between March 2 of the preceding year and March 1 of the current year for a place of business located in the township; and
- (2) the address of each place of business of the taxpayer in the township.

SECTION 3. IC 6-2.5-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) An organization, exempt from the state gross retail tax under IC 6-2.5-5-21, IC 6-2.5-5-25, or IC 6-2.5-5-26 may register with the department as a purchaser of property in exempt transactions. An exempt organization wishing to register must file an application listing its principal location, but the organization is not required to pay the fee.

(b) Upon receiving the application, the department may issue an exempt organization certificate containing a serial number and the principal location of the exempt organization.

(c) An exempt organization is not required to file a return under IC 6-2.5-6-1 if the only reason the organization registers with the department is because the exempt organization is a purchaser in exempt transactions and the exempt organization does not make either exempt or nonexempt sales.

(d) An exempt organization that does not file a return under subsection (c) is required to renew the exempt organization's

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1 registered exempt organization's certificate as provided under
 2 section 1(f) of this chapter. However, the department may request
 3 the exempt organization file a renewal application. The exempt
 4 organization shall renew the exempt organization certificate within
 5 thirty (30) days after the expiration date, at no cost to the exempt
 6 organization.

7 SECTION 4. [EFFECTIVE UPON PASSAGE] (a) IC 6-2.5-6-1,
 8 IC 6-2.5-8-1, and IC 6-2.5-8-4, all as amended by this act, apply to
 9 reporting periods that begin after June 30, 2007.

10 (b) The department of state revenue may adopt temporary rules
 11 in the manner provided for the adoption of emergency rules under
 12 IC 4-22-2-37.1 to implement IC 6-2.5-6-1, IC 6-2.5-8-1, and
 13 IC 6-2.5-8-4, all as amended by this act. The temporary rules must
 14 provide a method for determining if an exempt organization is not
 15 required to file returns after June 30, 2007.

16 (c) A rule adopted under this SECTION expires on the earliest
 17 of the following:

18 (1) The date a rule is adopted by the department of state
 19 revenue under IC 4-22-2 that repeals, amends, or supersedes
 20 the temporary rule.

21 (2) The date another temporary rule is adopted under this
 22 SECTION.

23 (3) The date specified in the temporary rule.

24 (4) December 31, 2008.

25 SECTION 5. An emergency is declared for this act.

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